

REMARKS**Summary of the Office Action**

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0061059 to Gobel et al. (hereinafter "Gobel") in view of U.S. Patent Application Publication No. 2001/0013576 to Miller et al. (hereinafter "Miller").

Summary of the Response to the Office Action

Applicants have canceled claims 2-4, 6-8, 10-12 and 14-20 without prejudice or disclaimer. Applicants have also amended claim 1 and added new claim 21 to differently describe embodiments of the disclosure of the instant application. Accordingly, claims 1, 5, 9, 13 and 21 remain pending for consideration.

Rejection under 35 U.S.C. § 103(a)

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gobel in view of Miller. Applicants have canceled claims 2-4, 6-8, 10-12 and 14-20 without prejudice or disclaimer, rendering the rejections of these claims moot. Applicants have also amended claim 1 and added new claim 21 to differently describe embodiments of the disclosure of the instant application. To the extent that these rejections might be deemed to still apply to the claims as newly-amended, they are respectfully traversed for at least the following reasons.

Applicants respectfully submit that the applied U.S. publication of Gobel does not have a 35 U.S.C. § 102(e) date because it appears that it's WIPO PCT publication (WO/2002/044755) published in the German language according to the indication of "Publication Language" on it's coversheet, a copy of which is attached hereto for the Examiner's convenience. Further, the

applied U.S. publication of Gobel does not qualify as prior art against the instant application under 35 U.S.C. § 102(a) because it published on April 1, 2004 which is after the International Filing Date of September 19, 2003 of the instant application. However, Applicants note that the WIPO PCT Publication (WO/2002/044755) that appears to correspond to Gobel has a publication date of June 6, 2002, even though this document published in the German language, as discussed previously. Accordingly, to the extent that this PCT Publication, or some other corresponding publication of Gobel, might be applied against the claims of the instant application in a similar combination rejection, Applicants provide the following technical traversal of the combination rejection. To the extent that any of Applicants' understandings in these regards are incorrect, clarification is respectfully requested to be provided by the Examiner in the next Office Communication.

Applicants respectfully submit that, in the Office Action, the Examiner asserts that Gobel discloses all of the instant application's claimed features except for the radiation detector apparatus comprising detectable portions with respect to the main body. However, the Examiner then asserts, at page 3, section 7 of the Office Action that Miller discloses a radiation detector apparatus comprising a detectable portion with respect to the main body.

Applicants have amended the claims of the instant application so that the remaining claims are directed to embodiments shown, for example, in Figs. 11 and 12, the sixth embodiment. As a result, Applicants have incorporated the following features into the currently pending claims: 1) the radiation detection probe has a radiation detection element 2A which is a semiconductor element for generating a voltage pulse signal having a pulse height value corresponding to the energy of the radiation photon; 2) a control unit 5, for example, is provided

at the first end of the manipulator grip and the control unit 5 processing the voltage pulse signal from the radiation detection element (2A, for example); and 3) a power supply switch 8, for example, is provided near the first end of the manipulator for switching over from the power supply to the control unit 5, for example, see Fig. 11, for example, and electrically connected to the control unit 5, for example.

Applicants have attached hereto an Exhibit A, which is a marked-up version of Fig. 11 of the instant application. Applicants do not intend to amend Fig. 11 by submitting this Exhibit A. Instead, this marked-up version is attached hereto as Exhibit A merely for the convenience of the Examiner in reference to these concurrently-filed remarks.

Newly-amended independent claim 1 of the instant application now describes an advantageous combination of features of a radiation detector with a manipulation grip that includes a main body portion including a radiation detecting portion having a radiation detection probe (for example, 2 in the attached Exhibit A) disposed at a first end (for example, P in the attached Exhibit A) of the manipulation grip for detecting a radiation intensity, a radiation detection element (for example, 2A in the attached Exhibit A) being provided in the radiation detection probe (for example, 2) and being a semiconductor element for generating a voltage pulse signal having a pulse height value corresponding to the energy of the radiation photon.

Also included is a liquid crystal display portion (for example, 6 in the attached Exhibit A) being disposed near the first end of the manipulation grip. Also included is a control unit (for example 5 in the attached Exhibit A) provided near the first end of the manipulator grip, for processing the voltage pulse signal from the radiation detection element. Also included is a power supply switch (for example 8 in the attached Exhibit A) electrically connected to the

control unit (for example, 5 in the attached Exhibit A) and provided near the first end of the manipulation grip (for example, B in the attached Exhibit A) for switching over power supply to the control.

The claimed combination of independent claim 1 also includes a detachable portion with respect to the main body portion, the detachable portion being disposed at a second end of the manipulation grip and including a sound output portion (7A, for example) having a speaker for outputting a sound according to the radiation intensity detected by the radiation detecting portion, and a power supply portion (3, for example) for supplying power at least to the radiation detecting portion (2a, for example) and the sound output portion (7A, for example) and the control unit (5, for example).

Applicants respectfully submit that in a radiation detector according to the amended claim 1 of the instant application, a radiation detecting element 2A, for example, is a semiconductor element for generating a voltage pulse signal having a pulse height value corresponding to the energy of the radiation photon, and the longer of distance between the semiconductor radiation detecting element and a signal processing unit for processing the voltage pulse signal of the semiconductor radiation detecting element, the larger the influence of noise to the signal to be processed receives.

Applicants respectfully submit that in the radiation detector according to the amended claim 1 of the instant application, the distance between the detector and the control unit for processing the signal is short because the control unit is disposed near the first end of the manipulator at which the probe including the semiconductor radiation detecting element is

attached. Therefore, Applicants respectfully submit that the noise affecting the signal to be processed in the control unit may be suppressed.

Further, Applicants respectfully submit that in the radiation detector according to the amended claim 1 of the instant application, a power supply switch is disposed near the first end of the manipulator. As shown in the attached Exhibit A, an operator of the radiation detector handles a portion D of the manipulator, that is, a portion (gripping portion, for example) of the manipulator near the second end of the manipulator. Accordingly, Applicants respectfully submit that such an arrangement may prevent the operator from operating the power supply switch by mistake.

Applicants respectfully submit that the above arrangements are not disclosed, nor even suggested in Gobel or Miller. Accordingly, Applicants respectfully assert that the rejections under 35 U.S.C. § 103(a) should be withdrawn. MPEP § 2143.03 instructs that “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).”

Furthermore, Applicants respectfully assert that dependent claims 5, 9, 13, and newly-added dependent claim 21, are allowable at least because of their dependence from independent claim 1, as amended, and the reasons set forth above. Additionally, Applicants respectfully submit that as described in newly-added dependent claim 21, the probe is arranged with respect to the manipulator with some inclination there between, such as X1 and X2, for example. Newly-added dependent claim 21 describes that a longitudinal direction (for example, X1 in the attached Exhibit A) of the radiation detection probe (for example, 2 in the attached Exhibit A) is inclined with respect to a longitudinal direction (for example, X2) of the manipulation grip (for

example, B in the attached Exhibit A). Applicants respectfully submit that such arrangements are not disclosed, nor even suggested, in Gobel or Miller.

CONCLUSION

In view of the foregoing discussion, Applicants respectfully request the entry of the amendments to place the application in clear condition for allowance or, in the alternative, in better form for appeal. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicants' undersigned representative to expedite prosecution. A favorable action is awaited.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. § 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0573. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

DRINKER BIDDLE & REATH LLP

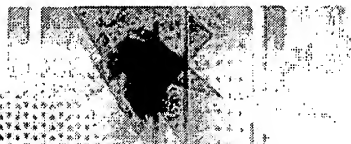


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(WO/2002/044755) MEDICAL PROBE FOR MEASURING RADIOACTIVE RADIATION

Biblio. Data	Description	Claims	National Phase	Notices	Documents
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Latest bibliographic data on file with the International Bureau

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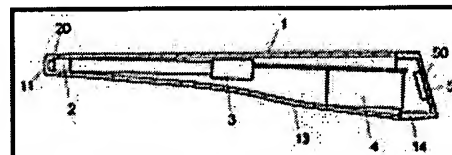
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 101 31 413.2 26.06.2001 DE

Title: (EN) MEDICAL PROBE FOR MEASURING RADIOACTIVE RADIATION
 (DE) MEDIZINISCHE SONDE ZUR MESSUNG RADIOAKTIVER STRAHLUNG

Abstract: (EN) The invention relates to a medical probe for measuring radioactive radiation, comprising a housing that can be held single-handedly. A detector device (2) comprising a semiconductor diode is disposed in the housing and produces signals that interact with at least one of the following radioactive radiations: α , β^+ , β^- , γ and n radiation. A signal processing device (3) processes the signals produced by the detector device (2). A power supply device (4) provides the detector device (2) and the signal processing device (3) with power. The inventive probe is especially characterized in that a reproduction device (5) for reproducing the signals processed by means of the signal processing device (3) is mounted in the housing (1). The inventive device provides a compact measuring system that facilitates an (especially wireless) flexible intraoperative and extraoperative, local measurement of radioactively labeled tissue without requiring additional appliances.



(DE) Medizinische Sonde zur Messung radioaktiver Strahlung Die Erfindung betrifft eine medizinische Sonde zur Messung radioaktiver Strahlung mit einem in einer Hand haltbaren Gehäuse, darin angeordnet eine, eine Halbleiterdiode umfassende, Detektoreinrichtung (2) zur Erzeugung von Signalen in Wechselwirkung mit mindestens einer der folgenden radioaktiven Strahlungen: α , β^+ , β^- und γ Strahlung, eine Signal-Verarbeitungseinrichtung (3) für die Weiterverarbeitung der von der Detektoreinrichtung (2) erzeugten Signale und eine Energieversorgungseinrichtung (4) zur Energieversorgung der Detektoreinrichtung (2) und der Signal-Verarbeitungseinrichtung (3). Erfindungsgemäß ist vorgesehen, dass im Gehäuse (1) eine Wiedergabeeinrichtung (5) zur Wiedergabe der mittels der Signal-Verarbeitungseinrichtung (3) verarbeiteten Signale angeordnet ist. Dadurch wird ein kompaktes Messsystem bereitgestellt, das ohne Zusatzgeräte (insbesondere kabellos) die flexible intra- und extraoperative, lokale Messung von radioaktiv markiertem Gewebe ermöglicht.

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